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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 MARK WAYNE CLARK

12 Plaintiff,

13 v.

14 ROBERTA F. KANIVE, *et al.*,

15 Defendants.

16 Case No. C10-5203RBL

17 REPORT AND RECOMMENDATION

18 Noted for November 26, 2010

19 This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned
20 Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local
21 Magistrate Judges' Rules MJR 1, MJR 3, and MJR 4.

22 The matter is before the court on plaintiff's motion for entry of default (ECF No. 27).
23 In his motion for default, plaintiff asks the court to enter default against defendants Tambra
24 Zanders, Cheryl Matthynssens, Christopher Reed, Erik Knudson, John/Jane Doe #1, and
25 John/Jane #2. The motion was filed on or about September 15, 2010, and each of the individuals
26 identified are employees of the Spectrum Company, which operates a work program at the

REPORT AND RECOMMENDATION- 1

1 Stafford Creek Corrections Center where plaintiff was in custody. Significantly, on or about
2 September 23, 2010, counsel appeared on behalf of the named Spectrum defendants in addition
3 to Tracy Harding (ECR No. 30). The Spectrum defendants also filed an Answer to the
4 Complaint (ECF No. 31) and a response to the motion for entry of default (ECF No. 32).

5 DISCUSSION

6 The Federal Rules of Civil Procedure require defendants to answer a complaint within
7 twenty (20) days from the date being served with the summons and complaint, or if service of the
8 summons was timely waived, within sixty (60) days after the date when the request for waiver
9 was sent. Fed. R. Civ. P. 12(a). If a defendant fails to respond within that time, a default
10 judgment may be entered. Benny v. Pipes, 799 F.2d 489, 492 (9th Cir. 1986), *cert. denied*, 108
11 S.Ct. 198 (1987). Default judgments are generally disfavored and the court prefers a decision on
12 the merits, In re Hammer, 940 F.2d 524, 525 (9th Cir. 1991).

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14 The court should deny plaintiff's motion for entry of default against the Spectrum
15 defendants. Counsel has appeared and an answer to plaintiff's complaint has been filed on
16 behalf of the defendants to whom plaintiff seeks default. As noted above, the court disfavors
17 default and prefers that this matter should proceed on the merits of the case. Plaintiff argues the
18 appearance and answer were untimely; however, he has not shown any prejudice due to the
19 alleged untimely response to his complaint. Accordingly, entry of default against these
20 defendants would be inappropriate.

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22 CONCLUSION

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24 Based on the above, plaintiff's motion for entry of default (ECF No. 27) should be
25 denied. Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. Pro., the parties shall have fourteen
26 (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6.

REPORT AND RECOMMENDATION- 2

1 Failure to file objections will result in a waiver of those objections for purposes of appeal.

2 Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the
3 clerk is directed to set the matter for consideration on **November 26, 2010**, as noted in the
4 caption.

5 Dated this 3rd day of November, 2010.
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10 J. Richard Creatura
11 United States Magistrate Judge
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